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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st October, 2023

No. 13/2/41-HII(2)-2023/16025.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **117/2018 dated 04.08.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANIL KUMAR, S/O SH. PARSHOTAM SINGH, RIO H. NO.335-D, VILLAGE DARIYA, NEAR RAILWAY STATION, CHANDIGARH (Workman)

AND

1. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I. INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER
2. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO NO.181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Anil Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed as a Helper on 27.11.2006 by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to prove straightness quality in Hand Straightening Department. The interview was conducted by its then Factory Manager namely Shri Manmohan Singh Dhaliwal. The workman was given token No.32 at the time of his removal. The workman is a 'workman' defined under Section 2(s) of the ID Act. It was informed to the workman that he would be deputed on regular work of the factory and his employment would be regular, **162** on papers it would be through contractor namely Hawks Eyes Security Services Pvt. Ltd. / management No.1. It was further informed that the workman would be entitled for all the benefits. Accordingly, the workman was trained by the management No.1 and then deputed in the Hand Straightening Department. The process of Hand Straightening is to remove bends from the needles and to make needles straight with hands.

Signature of Anil Kumar
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The operation was done after process of automatic repair shortly named as R-Comb (Repair Combination). After Hand Straightening the product moves to final inspection and then packaging. Hence, the workman was engaged in a very crucial and important manufacturing / quality process of management No.1. The operation on which the workman was engaged was a regular work and hence about 30 workmen had been engaged by the management No.1 for this process. The daily timing of the workman was from 8:30 to 5:00 P.M. with weekly off. The work of workman was controlled, supervised and assessed by management No.1's engineer namely Shri Satish Sharma. During some period the work of the workman was controlled, supervised and assessed by its other engineers namely Shri Lalit Mohan Kalia. The personal file, record of leaves etc. of the workman was maintained by its Human Resource Department. The workman was being paid ₹14,800/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹ 10,336/- per month at the time of his removal as salary by the management No.1 though through contractor. Management No.1 have paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and have also paid ₹ 3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all the employees of management No.1. The workman was also enjoying yearly increment given by management No.1. The last drawn net salary of the workman is ₹ 10,336/-. The workman had not been given his salary of May 2018 on time and the same was paid on 06.07.2018 after filing of demand notice. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 01.06.2018 the workman was called by Human Resource Officer of management No.1 namely Shri Ajay Patyal and he directed the workman not to come on duty from the next day and forced him to sign some blank papers but the workman refused for the same. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of a sudden without following the mandatory procedure laid down under the provisions of the ID Act. The junior employees than workman have been retained in the service, in violation of provisions of law by the managements. The said Hand Straightening process is still going on as the process is very crucial and is a regular work of the factory of management No.1. While terminating the services of the workman, the managements have utterly violated the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The nature of work being done by the workman is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of Hand Straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the Hand Straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The workman has served in the factory of management No.1 for continuous period from 27.11.2006 to 01.06.2018. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice dated 08.06.2018 to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh, both the managements submitted its reply dated 24.07.2018 and 05.10.2018 respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. Accordingly, Conciliation Officer vide letter Memo No.6851 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act and accordingly the claim. During the pendency of the conciliation proceedings before the Conciliation Officer, management No.2 to create elusion and false bona fide sent an ante dated letter dated 06.06.2018, actually sent on 13.06.2018, falsely stating that Hand Straightening Unit is closed at the management No.1 factory. When the workman contacted the management No.2, he was asked to work at some other place at a salary of ₹ 9,000/- which was much lower than the last paid salary of ₹14,800/-. The workman had made it clear to management No.2 that he is entitled to same wages as he was last paid and did not work for the lesser amount. However, no such offer was paid by the management No.2 during the conciliation proceedings. Prayer is made that the application may be allowed. The managements may be ordered to reinstate the service of the workman with continuity of service along with all consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement on 12.07.2019 wherein preliminary objections are taken on the ground that the claimant/person concerned was never in the employment of management No.1 (GBA). There was no privity of contract between the concerned person and management No.1. As such, no employer-employee ever existed between management No.1 and the workman. Therefore, the question of appointment or termination of services of the concerned person by the management No.1 does not arise. The concerned person was employee of management No.2 (contractor), who is a licensed contractor under the Contract Labour (Regulation & Abolition) Act, 1970 (*here-in-after referred the 'CLRA'*). The concerned person was getting his monthly wages from management No.2 / contractor. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisory / Assistant Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law, as such the same needs to be dismissed on this ground itself. The concerned person was employed by the management No.2 (contractor). The services of the person concerned were regulated by the contractor in accordance with the CLRA Act, 1970 and Rules thereunder and not under the ID Act. Therefore, the concerned person had the remedy to file claim under the CLRA Act, 1970 and Rules but not under the ID Act. Hence, the present statement of claim / reference needs to be rejected on this ground also. The services of the concerned person were not required by the contractor and the concerned person was offered alternative employment by management No. 2 / contractor, which offer was not availed by the person concerned. Therefore, the present statement of claim / reference is not maintainable and is liable to be dismissed on this ground too. Since, there was no employment of the person concerned with the management No. 1 / GBA, the question of termination of appointment of the concerned person by the management No. 1, GBA does not arise. Hence, the present statement of claim / reference seeking relief from management No. 1 / GBA is bad in the eyes of law and is liable to be dismissed on this score as well.

4. Further on merits, it is stated that the concerned person was employee of management No.2 / contractor and he was deployed to work as Helper in the factory of management No.1 / GBA as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by management No.1 / GBA. The concerned person was duty by management No. 2 / contractor to work as a Helper in the Hand Straightening Department. Being a contract labour of management No.2 / contractor, he was not required any training as he was simply to work as a Helper. Since, the work in the Hand Straightening Department was subject to fluctuation, this activity was assigned to the contractor who used to supply contract labour as per requirement from time to time. The work of the concerned person was controlled, supervised and assessed by supervisory / Assistant Supervisory of management No.2 / contractor. The concerned person was employee of management No.2 / contractor and therefore it is management No.2 who would confirm the rate of wages paid to the contractor. It is denied as wrong that management No.1 / GBA has ever paid ₹ 1,200/- as Diwali festival sweets or ₹ 3,000/- in 2010 on occasion of silver jubilee celebration. In fact management No.1, GBA has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payment only from the management No.2 / contractor. It is denied for want of knowledge that the last drawn net salary of the workman was ₹ 10,336/- and that workman had never been given his salary of May 2018 on time and the same was paid on 06.07.2018, after filing of demand notice. It is denied that on 01.06.2018 the concerned person was called by Human Resource Officer Shri Ajay Patyal and that he directed the concerned person not to come on duty from the next date and he forced the concerned person to sign some blank papers, to which concerned person refused. In fact, the concerned was never called

by Shri Ajay Patyal and he was never directed not to come on duty on the next date. He was never forced to sign on blank papers. The concerned person was employee of management No. 2 / contractor and hence the management No. 1 / GBA had no role to play in the appointment or termination of the services of the concerned person. Section 20-G of the ID Act is not attracted in the present case. Management No. 1 / GBA was having surplus manpower and in that situation management No. 1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. The claimant was one of such contract labour. Therefore, the regular work force of management No.1 / GBA was shifted to Hand Straightening Department. It is denied as wrong that the process of Hand Straightening improve the quality of needles. It is denied as wrong that without this process, the product of management No.1 can either be packed nor sold into the market. The Hand Straightening of needles is not perennial in nature. Management No.1 registered itself under CLRA Act, 1970. Management No.2 / contractor obtained licence under the CLRA Act, 1970 from the competent authority to supply the contract labour to management No.1 / GBA. Therefore, there was no illegality or any violation of CLRA Act, 1970 in outsourcing the Hand Straightening work to management No. 2. It is denied that the concerned person have served for continuous period was an employee of management No. 1 / GBA from 27.11.2006 to 01.06.2018. The concerned person was employee of management No.2 / contractor. It is admitted to the extent that the concerned person submitted demand notice dated 03.06.2018 for which the conciliation proceedings took place. Management No. 1 / GBA and management No. 2 / contractor submitted reply to the demand notice on 24.07.2018 and 05.10.2018 respectively. The alternative employment was issued to the claimant by management No. 2 (contractor) but the same was declined by the claimant. Consequently, conciliation proceedings failed. During conciliation management No. 2, contractor offered alternate employment to the claimant with its other clients but this offer was denied by the claimant on the ground that he will not work at any other place except management No. 1 / GBA. Rest of the averments of claim statement are denied as wrong and prayed is made that the claim statement / reference may be dismissed with exemplary cost.

5. Management No. 2 / contractor contested the claim statement by filing written statement on 07.10.2019 wherein preliminary objections are raised on the ground that management No. 2 is an agency that engages workers on contract according to the requirement of principal employer. The contract of management No. 2 with management No. 1 is service contract of temporary nature, based on the volume of work generated by the company. Accordingly, the manpower was recruited on temporary / piece rate basis. Over a period of time the work generated became lesser and lesser, therefore management No.2 had to slowly reduce the manpower according to the work requirement of principal employer. The nature of work being temporary the workers were employed on day to day basis although their calculations of payment were done monthly. Since the work requirement reduced with the passage of time and the answering management being concerned about the future of the concerned person arranged alternate employment for them, where it sought to adjust to them. The workman did not respond this gesture and continued on the present job knowingly fully well that the Hand Straightening work is coming to an end in the plant of principal employer. When the answering management started the service contract with management No.1, there were over 100 workers deployed in the work of straightening the needles as the orders dwindled and the work reduced the workers engaged by the answering management also reduced to about 20. Management No.1 ultimately closed the Hand Straightening work of the needles and the worker including the present one become surplus to the requirement and he was offered alternative employment at other places where the answering management has work requirement but the workman choose not to go there and thus, abandoned the employed. The answering management is still ready to offer them employment at other places on similar wages if possible.

Management No.2 has not been impleaded in a legal and proper manner. Therefore, the statement of claim is bad in law. The present statement of claim is liable to be rejected as the concerned workman is not competent to file the statement of claim under the ID Act. Thus, the statement of claim may be rejected on this ground.

6. On merits, it is stated that the workman was a piece rate worker, paid by number of needles he retrieved. He worked in the factory of management No.1. The timings of the workman were from 8:30 A.M to 5:00 P.M. with weekly off. The answering management had offered job to the workman at another place where the work was available but the workman was adamant to work at the premises of the management No.1 only and did not accept the offer of the answering management. It is denied that the workman was offered salary @ ₹ 9,000/- only. The workman gainfully employed at another place. Further similar stand is taken as taken in the preliminary objection. Rest of the contents of the claim statement are denied as wrong and prayer is made that the workman is not entitled to any relief from management No.2. The claim application / reference is liable to be dismissed with cost.

7. The workman filed rejoinder to the written statement of management No.1 wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 not filed.

8. From the pleadings of the parties following issues were framed vide order dated 26.02.2020 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No. 1 and workman ? OPM-1
3. Relief.

9. In evidence workman Anil Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with letter dated 06.06.2018 issued by management No.2 to the workman relating to the subject of reminder for relocation of services Exhibit 'W1' and envelope bearing registered postal receipt dated 13.06.2018 Exhibit 'W2'. During the cross-examination of AW1 management No.1 put documents Exhibit 'M1' and Exhibit 'M2' to the witness.

Exhibit 'M1' is copy of written comments dated 05.10.2018 submitted by M/s Hawks Eye Security Services Private Limited (management No.2 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

Exhibit 'M2' is copy of written comments dated 24.07.2018 submitted by M/s Groz-Beckert Asia Private Limited (management No.1 herein) before the Conciliation Officer and Assistant Labour Commissioner, U.T. Chandigarh.

On 16.03.2023 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

10. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive - HR M/s Groz Beckert Asia Pvt. Ltd. (GBA), Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'. The original of Exhibit 'M3' was brought at the time of recording testimony, which was seen and returned. During cross-examination MW1 placed on record authority letter dated 14.03.2023 Exhibit 'M4' whereby he has been authorised by the management to appear, make statement, lead evidence and tender document. (Exhibit 'M4' is numbered twice due to inadvertence and in order to avoid any ambiguity authority letter dated 14.03.2023 is renumbered as Exhibit 'M4/1').

11. Management No.1 also examined MW2 Sukhjit Singh - Clerk, O/o Assistant Labour Commissioner, Sector 30-B, Chandigarh, who brought into evidence documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

12. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control), M/s GBA, who tendered his affidavit Exhibit 'MW3/A' along with copy of authority letter dated 26.05.2023 in his favour vide Exhibit 'M4' and authority letter dated 14.03.2023 in favour of Factory Manager issued by the Managing Director of GBA vide Exhibit 'M5'.

13. Management No.2 did not lead any oral or documentary evidence. Learned Representative for management No.2 closed evidence on 20.07.2023. Learned Representative for management No.1 closed the evidence on 04.08.2023.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are under :-

Issue No. 1 & 2 :

15. Onus to prove issue No. 1 is on the workman. Onus to prove issue No.2 is on management No.1. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

16. To prove its case, the workman Anil Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'W1' and Exhibit 'W2'.

17. On the other hand, management No.1 examined MW1 Ajay Kumar Patyal - Senior Executive HR of GBA, who vide his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was employee of M/s Hawks Eye Security Pvt. Ltd. and was deployed / outsourced to work as a Helper in the factory of GBA, Chandigarh. There was no privity of contract between the workman concerned and GBA. No employer-employee relationship existed between the workman concerned and GBA. The workman concerned was paid his monthly wages by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was covered under respective EPF and ESI codes of M/s Hawks Eye Security Pvt. Ltd. The work & conduct of the workman concerned was looked after by M/s Hawks Eye Security Pvt. Ltd. through its Supervisor Smt. Krishna Rani. M/s Hawks Eye Security Pvt. Ltd. was engaged by GBA to undertake casual nature of work in the Hand Straightening Section of GBA i.e. to retrieve the good quality of needles out of the scrapped needles and to straighten them and for this process M/s Hawks Eye Security Pvt. Ltd. was to deploy / outsource its manpower including the workman in the factory of GBA. The arrangement was discontinued vide Exhibit 'M3' as the volume of Hand Straightening of needles was considerable reduced and it was decided to get this work done by the permanent employees of the management No.1. M/s Hawks Eye Security Pvt. Ltd. was advised to withdraw its contract labour deployed for hand straightening on or before 30.06.2018. The agreement for contract of work with M/s Hawks Eye Security Pvt. Ltd. is legal and not sham at all. The GBA is registered under the CLRA Act, 1970 vide certificate of registration No.PB/PE/CL/UT/CHD/2003/49 dated 08.01.2003 for engaging contract labour for casual work. M/s Hawks Eye Security Pvt. Ltd. is a licensed contractor having licence No.CL/UT/CHD/239 under the CLRA Act, 1970. The services of the workman concerned were never terminated by GBA. The concerned workman was never interviewed by GBA nor was his work ever controlled, supervised and assessed by Sh. Satish Sharma or by Sh. Lalit Mohan Kalia, Engineer of GBA. His attendance / leave record was maintained by M/s Hawks Eye Security Pvt. Ltd. The workman concerned was not paid ₹ 1,200/- as Diwali festival sweets and ₹ 3,000/- in 2010 on the occasion of golden jubilee of GBA. He was never paid any amount whatsoever by GBA. The workman concerned was never called by him directing him not to come on duty from next day. He was never forced to sign on some blank paper. The concerned workman was never informed that he would be deputed on regular work and that his employment is regular. The concerned workman was deployed as Helper and no training was required to be given by the GBA. MW1 has supported his oral version with copy of extension of contract and withdrawal of contract labour dated 30.04.2018 vide Exhibit 'M3'.

18. In order to prove the contract between management No.1 and 2, management No.1 examined MW2 Sukhjeet Singh, O/o Assistant Labour Commissioner, Sector 30, Chandigarh, who deposed that he has brought the summoned record. M/s Groz-Beckert Asia Pvt. Ltd. (G.B.A.) was issued certificate of registration under the Contract Labour (Regulation & Abolition) Act, 1970 first time on 08.01.2003. The certificate contains the names of the contractors including the name of M/s Hawks Eye Security Services Pvt. Ltd. (HESS). The certificate also contains the nature of work to be performed by the contract labour in the establishment of GBA i.e. canteen contractor, house-keeping, security, loading and unloading, casual work, civil work etc. The GBA used to get the certificate of registration renewed / amended from our department from time to time up to the year 31.12.2021. The copy of the certificate of registration issued to GBA accompanied with Memo No.7579 dated 03.11.2003 is Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 is Exhibit 'MW2/2'. He further deposed that M/s Hawks Eye Security Services Pvt. Ltd. (HESS) was granted a license No. C.L./U.T./C.H.D/239 dated 26.02.2003 to deploy contract labour in the factory of GBA. The license issued to HESS has the endorsement on the top of the license showing GBA as Principal Employer (PE). The license contains the nature of work to be performed by the contract labour deployed by the contractor in the establishment of the principal employer (GBA), i.e. House-Keeping, Security, loading, unloading, casual work, civil work etc. The license of HESS was renewed up to 31.12.2017. Copy of the licenses along with endorsements containing 8 pages is Exhibit 'MW2/3'. MW2 further deposed that he has brought the original file of conciliation proceedings pertaining to the present case. The conciliation proceedings dated 05.10.2018 bears the signatures of the workman and the same were also signed by the Conciliation Officer (CO), copy of the same is Exhibit 'MW2/4'.

19. Management No.1 also examined MW3 Lalit Mohan Kalia - Assistant Manager (Quality Control) of M/s GBA, who vide his affidavit Exhibit 'MW3/A' deposed that he joined the services of GBA on 06.05.1997 and now has been working in its quality control department as Assistant Manager (Quality Control). Shri Satish Sharma was also working in his department as Assistant Engineer (Quality Control). Shri Satish Sharma retired on 04.04.2019. Neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workers deployed by the contractor in the Hand Straightening Department. The work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who deployed by the contractor. He has been authorized by the Factory Manager of GBA to make statement before this Court in the present case. The authority letter is Exhibit 'M4'. The Factory Manager has been authorised by the Managing Director to authorize any official of the company to make statement before any Labour Court vide Exhibit 'M5'.

20. Learned Representative for the workman contended that the workman was appointed as a Helper by management No.1 (GBA) and was assigned the work of hand straightening of knitting needles to improve straightness quality in the Hand Straightening Department. The interview was conducted by Shri Manmohan Singh Dhaliwal, the then Factory Manager whereas on papers the appointment of workman was through the contractor Hawks Eyes Security Services Pvt. Ltd. / management No.2. Any contract entered into between management No.1 and 2 to such effect is illegal / sham and to avoid legal liabilities in the hands of management No.1 as envisaged under the labour laws. Moreover, the workman through the process of hand straightening improves the quality of needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, the hand straightening process being regular process cannot be outsourced through contractor. About 30 workmen were engaged by management No.1 for this process. Apart from that work of the workman was supervised and assessed by Shri Satish Sharma and Shri Lalit Mohan Kalia Engineers of management No.1. The personal file, record of leave etc. of the workman was also maintained by its Human Resource Department. Management No.1 also paid ₹ 1,200/- on 18.10.2017 as Diwali festival sweets and ₹ 3,000/- in 2010 while celebrating its golden jubilee to all the employees of management No.1 including the workman. Besides, the workman was also given yearly increment by the management No.1. In this manner, there is a direct relationship of employer and employee between management No.1 and the workman.

21. On the other hand, learned Representative for management No.1 contented that there is no relationship of employer-employee between the management No.1 and the workman. The workman was appointed by management No.2 (contractor) and deployed to work in the establishment of management No.1. The workman was getting his monthly wages from management No.2. Management No.2 / contractor is covered under the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 having EPF Code PBCHD0012070000 and ESI code 17120364120011001 and the concerned person was covered under the PF and ESI under the above said codes of management No.2 / contractor. Management No.1 / GBA had no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of supervisor / Assistant Supervisor of management No.2 / contractor. His work & conduct was also supervised and controlled by management No.2 / contractor, through its Supervisor / Assistant Supervisor.

22. In order to determine the relationship of employer & employee between management No.1 & workman, it is important to refer cross-examination of workman i.e. AW1 Anil Kumar. When put to cross-examination by management No. 1, AW1 admitted as correct that he has impleaded management No.1 as principal employer and management No.2 as contractor. AW1 admitted as correct that he was covered under EPF and ESI under the respective code of management No. 2. AW1 admitted as correct that he was getting his monthly wages directly from management No. 2. AW1 admitted as correct that management No. 2 has withdrawn them from management No.1 on account of termination of the contract between management No.1 and management No. 2 and their work was given to the permanent employee of management No. 1. AW1 in his cross-examination further stated that if any offer of alternative employment is given to him today by management No. 2, then he is not ready to accept the same. AW1 admitted as correct that he was employee of management No. 2 (Hawks Eye Security). AW1 voluntarily stated that he was interviewed by Manmohan Singh Dhaliwal, HR Manager of management No.1 who told him that he has been given job as permanent employee of GBA. AW1 further stated that he do not have any proof in support of his voluntarily statement. AW1 further stated that during tenure of his service under the contractor / management No. 2 he never made any protest that he was interviewed by management No.1 and he has not been given permanent job. AW1 admitted as correct that the activity of Hand Straightening Department was subject to fluctuation. AW1 admitted as correct that due to fluctuation and un-certainty of work in the Hands Straightening Section, the employees were deployed on contract basis through the contractor. The aforesaid version of would prove that as per his own admission he was getting his wages directly from the contractor and was working as Helper in the factory of management No.1 being contractual employee of management No. 2. The workman has failed to place on record any document showing that he was appointed by management No.1. The workman has admitted that he was withdrawn from the factory of management No.1 by the contractor on account of termination of contract between the management No.1 and the contractor. The workman / AW1 has categorically admitted that he was employee of the contractor. Furthermore, MW1 Ajay Kumar Patyal when to cross-examination by the workman stated that Smt. Krishna Rani, a retired employee of GBA was employed by the contractor M/s Hawks Eye Security Services Pvt. Ltd. and she was deputed as a Supervisor to supervise the operation of hand straightening. The denial on part of the workman / AW1 during his cross-examination that no Smt. Krishna Rani was working with the Hand Straightening Section of management No.1 and that his work was not supervised by her would prove that the version of the workman is not trust worthy and he has deliberately denied the factual position. The plea taken by the workman that his work was supervised and controlled by Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 has been disproved from the version of MW3 Lalit Mohan Kalia, who stated that neither he nor Shri Satish Sharma ever supervised or controlled the work & conduct of the workman. MW3 has stated that the work & conduct of the contractual workers deployed by the contractor in the Hand Straightening Department was supervised and controlled by Smt. Krishna Rani, who was deployed by the contractor. From the aforesaid version of MW3 it is duly proved on record that Smt. Krishna Rani deployed by the contractor was supervising the work & conduct of the workman and Shri Satish Sharma and Shri Lalit Mohan Kalia, Engineers of management No.1 never supervised the work & conduct of the workman. Moreover, the workman has failed to controvert the fact that his services were covered under the ESI and EF scheme by the contractor / management No.2.

The expression 'control and supervision' in the context of contract labour was explained by the Hon'ble Supreme Court of India in case law titled as ***International Airport Authority of India Versus International Aircargo Workers' Union & Another***, reported in **2009(13) SCC 374** wherein in para 38-39 it is observed as below :-

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor; if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

The above mentioned case law is applicable to the facts of the present case to an extent. The workman has failed to produce any document on record to establish that he was direct employee of the principal employer. No document such as appointment letter, written contract, joining report, attendance register, leave record, PF record, ESI record is not produced by the workman showing existence of employer-employee relationship between the management of GBA and the workman. As discussed above, the workman / AW1 in his cross-examination has admitted that he was getting his wages directly from the contractor. AW1 in his cross-examination has also admitted that he was employee of the contractor. Accordingly, it is proved that the workman was working under the supervision and control of GBA i.e. principal employer but his control was secondary and the primary control was with M/s Hawks Eye Security Pvt. Ltd. i.e. contractor.

23. Learned Representative for the workman argued that GBA was not registered as principal employer under the CLRA Act, 1970 in the year 2003 or 2004 and M/s Hawks Eye was also not having licence or registration under the CLRA Act, 1970. Learned Representative for the workman had put suggestions to this effect to MW1 Ajay Kumar Patyal in his cross-examination, who denied the same as wrong. On the other hand, management No. 1 has proved certificate of registration No. PE/CL/UT/CHD/2003/49 dated 08.01.2003 issued to GBA accompanied with Memo No. 7579/03.11.2003 vide which the necessary amendment has been made in the registration certificate bearing No. PE/CL/UT/CHD/49 as Exhibit 'MW2/1' and certificate of registration of GBA issued on 25.12.2020 valid up to 31.12.2021 vide Exhibit 'MW2/2'. Management No.1 has also proved the licence No. CL/UT/CHD/239 dated 26.02.2003 granted to M/s Hawks Eye Security Pvt. Ltd. to deploy contract labour in the Factory of GBA vide Exhibit 'MW2/3'. The licence bears endorsements showing that the licence was renewed up to 31.12.2017. Thus, management No.1 has proved that there was a valid contract between management No.1 & 2 and the management No.2 was duly licenced to enter into agreement with the management No.1 to deploy the contract labour in the establishment No.1. Moreover, as per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the management reported **1992(1) SCT 107 SC** titled as ***Dina Nath & Others Versus National Fertilizers Limited & Others***, if the principal employer is getting registered under Section 7 of the CLRA Act, 1970 and the labour contractor is not getting licence under Section 12 of CLRA Act, 1970, the principal employer and the contractor are liable for prosecution for violation of Sections 7 & 12 of the CLRA Act, 1970. The persons employed by the principal employer through contractor would not become the employee of principal employer on account of violation of Section 7 & 12 of the CLRA Act, 1970. Another judgment referred by Learned

Representative for the management reported in **2006(1) SCT 701 (P&H)** titled as **M/s T.T. Public School Versus The Presiding Officer & Another**, is also applicable to the facts of the present to an extent wherein it has been held that unregistered contractor does not cease to be a contractor nor the labour supplied by him will become the employee of the principal employer.

24. Learned Representative for the workman laid much stress upon the fact that agreement of contract if any exists between management No.1 & 2 is merely a sham and paper transaction just to avoid the liability of employer towards the workman. In this regard MW1 Ajay Kumar Patyal when put to cross-examination by the workman denied the suggestion as wrong that arrangement of any contract, if exists is merely a sham and paper transaction just to avoid the liability of employer towards its workman. On the other hand, Learned Representative for the management has argued that in the present case the workman served a demand notice under Section 2-A of the ID Act challenging thereby his termination. Upon receipt of demand notice, the conciliation proceedings were initiated by the Conciliation Officer, U.T. Chandigarh. Management No.1 and management No.2 appeared during conciliation proceedings and filed their respective written comments. When no settlement took place between the parties, Learned Conciliation Officer on the basis of demand notice of the workman, was persuaded to refer the same for adjudication by the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh as per sub-Section 2-A(2) of the ID Act. Thus, adjudication in the present case is to be confined to the subject matter of demand notice of the workman. None of the parties can be permitted to make out a new case than the one which was raised by it for which the appropriate Government / Conciliation Officer was persuaded to refer the same for adjudication. To support his argument Learned Representative for management No.1 referred the judgment reported in **AIR 1959 SC 1191** titled as **Calcutta Electric Supply Corporation Limited Versus Calcutta Electric Supply Workers Union & Others** and another judgment reported in **1978 LIC 1416 Calcutta** titled as **Bengal River Transport Association Versus Calcutta Post Shramik Union & Others**. To my opinion, the aforementioned argument advanced by Learned Representative for management No.1 carries force because perusal of demand notice dated 03.06.2018 raised by the workman under Section 2-A of the ID Act would show that the averments pleaded in para 11 of the claim statement are not part of the demand notice. In para 11 of claim statement, the workman has pleaded that the nature of work being done by the applicant is regular process of manufacturing and quality improvement. The workman through the process of Hand Straightening improves the quality of the needles. Without the process of hand straightening, the product of management No.1 can neither be packed nor sold in the market. Hence, being regular process, the hand straightening process cannot be outsourced through any contract. Any contract entered into between the managements to such effect is illegal / sham and to avoid legal liabilities in the hands of the management No.1 as envisaged under labour laws. The aforesaid plea of contract between the managements No.1 & 2 being illegal / sham is not taken in the demand notice. The judgments referred by Learned Representative for management reported in **AIR 1959 SC 1191** and **1978 LIC 1416 Calcutta (supra)** are applicable to the facts of the present case to an extent. In the judgment reported in **AIR 1959 SC (surpa)** it has been in para 5 as below :-

"5. As we have already pointed out, Mr. Kumar has drawn our attention to the fact that several awards have made similar provisions for medical relief of the employees' families; he also emphasised the fact that whereas prior to the present award the liability of the appellant to give medical relief to its employees was in a sense unlimited it has now been limited to the extent of one month's salary of each employee. In other words, his argument was that though an additional liability to provide for medical relief to the members of the workers' families strictly so called has been imposed on the appellant, a ceiling has been placed on the said liability by directing that no employee can claim relied more than his one month's salary. He has also drawn our attention to the fact that the appellate tribunal has specified that the said relief would be available only to the wife, unmarried daughters and minor sons of the respondents provided they are entirely dependant on them and lived with them. These are matters which would be relevant on the merits of the award. We

propose to express no opinion on this aspect of the matter. We do not also propose to express any opinion on the question as to whether a demand for medical aid for the families of the employees can be said to constitute an industrial dispute under Section 2(k) of the Industrial Dispute Act. If the respondents think that their claim for the medical relief for the members of their families is legitimate and can properly become the subject matter of an industrial dispute it is open to them to request the Government of West Bengal to refer the said question specifically or adjudication by an industrial tribunal; and if such a reference is made we have no doubt that it would be dealt with by the tribunal in the light of the contentions which parties may raise before it. It is true that such a dispute appears to have been referred to industrial adjudication in some cases and has in fact been recognised by awards; but we are not called upon to consider that aspect of the matter in the present appeal. In the result we must hold that the tribunals below exceeded their jurisdiction in entertaining a demand which was not the subject-matter of the reference. There can be no doubt that it is only the subject matter of reference with which an industrial tribunal can deal."

In the judgment reported in **1978 LIC 1416 Calcutta (supra)**, it has been held in para 16 as below :-

"16. The function of the National Tribunal is quasi-judicial but it is not a civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. Its jurisdiction is limited and restricted only to the issues referred to by the appropriate Government by a reference."

25. The question that whether the contractor has been interposed for supply of contract labour for the work of principal employer under a genuine contract or is a mere ruse / camouflage can be looked into under the following two circumstances (a) on issuance of prohibition notification under Section 10(1) of CLRA Act, 1970 by the appropriate Government; (b) in an industrial dispute brought by the contract labour before the Industrial Adjudicator for adjudication. In the present case, neither any notification has been issued under Section 10 of CLRA Act, 1970 by the appropriate Government nor the contract labour has raised an industrial dispute seeking declaration of his employment condition by the Industrial Adjudicator. Therefore, the question with regard to the genuineness of the contract between principal employer / management No.1 and contractor / management No.2 cannot be determined in the present case. To such circumstances, the case law referred by Learned Representative for management No.1 reported in **AIR 2001 3527 SC** titled as **Steel Authority of India Limited Versus National Union Water Front Workers** is applicable to the facts of the present case to an extent wherein in para 124(5) it is held as below :-

"(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of the contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

26. In the present case, there is no order of termination of services of the workman. The management No.1 has taken the plea that management No.1 / GBA was having surplus manpower and in that situation the management No.1 / GBA had two options i.e. to dispense with the services of surplus permanent manpower or to adjust them in the Hand Straightening Department, which was outsourced to contract labour. Keeping in view the interest of the permanent workers, it was decided to do away with the contract labour so engaged in the Hand Straightening Department. Management No.2 / contractor was asked to withdraw his contract labour. On the other hand, management No. 2 taken the plea that since the work requirement reduced with the passage of time, therefore, the management No. 2 offered alternative job to the workman at another place where the work was available but the workman was adamant to work at the premises of management No.1 only and did not accept the offer of management No.1. The aforesaid plea taken by the management No.1 & 2 stands proved from cross-examination of AW1 Anil Kumar wherein he has admitted as correct that management No.2 has withdrawn them from management No.1 on account of termination of contract between the management No. 1 and management No. 2 and their work was given to the permanent employees of the management No.1. AW1 when put to cross-examination by management No.1 stated that he was not given any offer of alternative employment by management No. 2. AW1 when put to cross-examination by management No.2 stated that he had declined the offer of alternative employment given by management No.2 because he was offered less salary. From the aforesaid version of AW1 that he declined the offer of alternative employment because of less salary would support the plea of the management No.2 that management No.2 offered alternative employment to the workman. The version of AW1 that he declined the offer because of less salary is not substantiated with any proof as AW1 in his cross-examination stated that he never made any representation to management No. 2 that he has been offered less salary for alternate employment. AW1 further stated that after he was refused job by the management No.1, he never approached management No.2 seeking alternative job. AW1 in his cross-examination stated that today he is not ready to work with the management No. 2, if he is offered the job of Helper on current minimum wages. AW1 admitted as correct that today he is refusing to accept the job offer given by management No. 2 as he is earning sufficient to maintain himself. AW1 further stated that in the present case he is seeking the relief of reinstatement from management No.1. From the aforesaid version of AW1 it is duly proved on record that the workman is not ready to accept the offer given by management No. 2 / contractor for alternative employment because he is earning sufficient to maintain himself and not on the ground of less salary. Moreover, the workman is not willing to work with any other organization except management No.1 with whom the contract of management No.2 has already came to end. Consequently, there is no termination from services of the workman by its employer i.e. management No.2.

27. Accordingly, issue No.1 is decided against the workman and in favour of the managements. Issue No.2 is decided in favour of management No.1 and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 04.08.2023

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 31st October, 2023

No. 13/2/44-HII(2)-2023/16027.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **24/2018 dated 01.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PHOOL CHAND S/O SH. BHAGIRATH, HOUSE NO.3076, MALOYA COLONY, CHANDIGARH
(Workman)

AND

1. MUNICIPAL CORPORATION, UNION TERRITORY, SECTOR 17, CHANDIGARH THROUGH IT'S MUNICIPAL COMMISSIONER
2. MUNICIPAL COMMISSIONER, SECTOR 17, CHANDIGARH U.T.
3. EXECUTIVE ENGINEER, ROADS DIVISION NO.1, M.C. CHANDIGARH
(Management)

AWARD

1. Phool Chand, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined with the management as worker-cum-Beldar on daily wages in the year 1984 and served as such in PWD Division R-1, Chandigarh. The services of the workman were very good as neither anything adverse was found nor conveyed to him during his service period and the workman continued working with the management regularly without any break. The workman was working for full day daily along with other staff members from 9:00 A.M. to 5:00 P.M. The workman worked to the utmost satisfaction of his superiors and never gave any cause of concern. The workman was never issued any charge sheet, warning or any sort of show cause notice etc. during his entire service period with the management. All of sudden, the workman was removed from his job on 16.10.2008 by the management when the Chandigarh Police registered a criminal case in which the workman was also falsely involved without any sort of fault of him. He suffered huge loss as under compelling circumstances he was to remain behind the bars for long 14 days and his career was badly shattered for the mistake of some of the officials and the police officials. The workman remained behind the bars and thereafter he was granted bail. The workman soon submitted representation to the management on 26.11.2008 and requested to allow him to perform his duties but the workman was not allowed to join his duties. The management further issued letter bearing Memo No.6642 dated 01.05.2009 vide which the services of the workman were terminated by passing following relevant para :-

"In view of the above, I am of the opinion that your continuance in the services is no longer required. I hereby order that your services are dispensed with immediate effect.

You will be paid compensation as per Section 25-F of the ID Act, 1947."

The Chandigarh Police initiated further proceedings in criminal case and a police challan bearing No.48/2009 (702524/2008) remained pending for adjudication for long time in the Court of Mr. Pardeep Synghal, PCS,

Judicial Magistrate Ist Class, Chandigarh and the Learned Court pleased to acquit the workman vide order dated 05.08.2014. The relevant part of the judgment is reproduced as under :-

"Consequently, accused Phool Chand is hereby acquitted of the charges under Sections 419/420/467/468/471 levelled against him. His bail bonds and surety bonds are discharged. Bonds under section 437-A furnished by accused, the same are accepted and attested. The case property be disposed off under rules after awaiting the result of appeal / revision, if any, file be consigned to the records room, after due compliance."

The workman soon applied for getting certified copy of the said order dated 05.08.2014 and thereafter requested the management to join him at his post by submitting to them one attested copy of order dated 05.08.2014, the official of the management directed him to wait for 4 months as the U.T. Administration can file any appeal in this case. The workman made countless visits to the office of the management but he was neither heard properly nor any reply was given to him. Time and again, the workman was directed to wait for more time, to which the workman obeyed as he was not having any option to do any other act against the management. Finally, the workman submitted representation dated 20.01.2015 along with copy of court order dated 05.08.2014 and remained visiting one official to another for justice for long time. Finally the workman received a letter from the office of Sub-Divisional Engineer, Roads Sub-Division No.1, M.C. Chandigarh bearing Memo No.1427 dated 24.08.2015. The relevant portion of aforesaid memo is reproduced as below :-

"That in view of the FIR he was arrested by the Vigilance, Chandigarh Police on 16.10.2008 and consequently being a casual labour, his services were terminated w.e.f. 16.10.2008."

"That case came up for hearing before the Hon'ble Court of Judicial Magistrate, Ist Class, Chandigarh on 05.08.2014 and acquitted the applicant of all the charges and no further action is to be taken against him."

"That in view of the acquittal of the applicant and his request for reinstatement and poor financial conditions, it is recommended that Sh. Phool Chand S/o Sh. Bhagirath may be reinstated in service."

The management had not taken any action in response to letter dated 24.08.2015 and the workman further remained on road. Even he is not paid any retrenchment compensation or any other legal dues like leave encashment, bonus, gratuity and other dues required to be paid at the time of such termination. Hence, the said order of the management terminating the services of the workman are illegal, arbitrary, un-constitutional and against the provisions of the natural justice. The workman is given double punishment, on one score he was not allowed to join during his trial, false case was registered against the workman and he suffered litigation for years together and on the other hand, his services are terminated without holding any departmental inquiry or issuance of any show cause notice etc. The workman was not at all provided any opportunity of defence, on the other hand, he was compelled to visit time and again for justice for years together. The management had not bothered to take opinion from the Legal Department of it and the said opinion is not till date shared with the workman. The work of worker-cum-Beldar was existing at the time of illegal & unwarranted removal of workman from his job by the management. Moreover, the said job still exists with the management and is of permanent in nature. No notice was served upon the workman before his illegal retrenchment by the workman and no notice pay and retrenchment compensation was paid to him. Hence, the same is violation of Section 25-N and F of the ID Act. Even the management had employed some new workers at the place of workman just after his illegal removal from his job which is clear violation of Section 25-H of the ID Act. The workman was not paid minimum wages as prescribed by the management / Government from time to time and when the workman protested before the management for his just & legal rights he was ill-treated and victimized by the officials by putting heavy work load on him and finally the services of the workman were retrenched without following law and provisions laid down in the ID Act. The workman was not given any dues or benefits of his more than 20 years blotless working with the management at the time of his illegal removal from his job, hence it is against the principles of natural justice, arbitrary, illegal and un-constitutional in the eyes of law. The workman is still not gainfully employed and willing to work with the management. The workman is a poor man

belonging to Schedule Caste category and need job. His case may be considered in a sympathetic manner. Due to lack of money only the workman could not raise his dispute for some time earlier but now some of his co-workers and social workers of the city are assisting him for getting justice. The workman was working along with the above said staff member from time to time under noble guidance of his superiors and was having cordial relationship with all of them. The workman served continuously for more than 240 days / for long 20 years with the management without any breaks. The workman preferred a demand notice against his illegal termination by the management. The conciliation proceedings were initiated by the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh but no compromise took place. Hence, the matter was referred for adjudication to this Court. Hence, the workman is approaching this Hon'ble Court for proper proceedings. The workman was working in U.T. Chandigarh and this Hon'ble Court has got the jurisdiction to entertain the present industrial dispute reference. Prayer is made that the workman may be reinstated with continuity of service and all ancillary benefits as if the workman was never removed from his services, by setting aside the retrenchment order dated 01.05.2009 passed by the management or any other direction may be issued in favour of the workman as this Hon'ble Court deems fit.

3. On notice, managements No.1 to 3 contested the claim statement by filing joint written statement wherein preliminary objections are raised on the ground that the claim is not maintainable. The matter does not come under the industrial dispute, thus this Court has got no jurisdiction to entertain any such matter in the present form. Besides, the claim is without any cause of action.

4. Further on merits, it is admitted to the extent that the workman was working as Beldar on daily wages. The workman had sold a house allotted to him under rehabilitation scheme in Maloya colony and again got allotted another house in Palsora colony under rehabilitation scheme by changing his name to Gian Chand. In this regard, FIR bearing No.10 dated 16.10.2008 was registered under Sections 419, 420, 467, 471, 120-B of IPC by the Vigilance, Chandigarh Police, Chandigarh. On this, notice under Section 25-F of the ID Act was issued by office letter No.2900-01 dated 18.02.2009. The workman duly replied to the above said notice. After considering the reply the same was found unsatisfactory and the workman was found involved in acts of moral turpitude and accordingly his services were dispense with. It was further ordered that he will be paid compensation as per Section 25-F of the ID Act. It is a matter of record that the management issued letter bearing Memo No.66/42 dated 01.05.2009. It is a further matter of record that the Chandigarh Police initiated criminal proceedings and the Court of Mr. Pradeep Synghal, JMIC, Chandigarh vide judgment dated 05.08.2014 acquitted the accused (herein workman). It is specifically stated that the services of the workman were dispensed with as per the rules and principles of natural justice. Rest of the averments of claim statement are denied and wrong except para 13 which is replied being matter of record. Prayer is made that the claim statement may be dismissed.

5. The workman filed replication wherein the contents of the written statement except admitted facts of the written statement are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 10.10.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

7. In evidence the workman Phool Chand examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to Exhibit 'W10' and Mark 'A' & Mark 'B'.

Exhibit 'W1' is identity card of the workman issued by Municipal Corporation Chandigarh by S.D.E. R-1, M.C. Chandigarh on 10.07.2007.

Exhibit 'W2' & 'W3' is letter dated 21.05.1996 and 20.05.1996 issued to the workman and notification concerning transfer of workman and other workers issued by Executive Engineer, C.P. Division No.2(R), Chandigarh and Chief Engineer and Secretary Engineer, Chandigarh Administration.

Exhibit 'W4' is Gazette Notification dated 20.05.1996 issued by Chandigarh Administration concerning list of workers transferred to M.C. Chandigarh in which name of workman is mentioned at Sr. No. 160.

Exhibit 'W5' is certified copy of bail order dated 15.11.2008 passed by Ms. Raj Rahul Garg, ASJ, Chandigarh in B.A. No. 1464 of 2008 in F.I.R. No. 10 dated 16.10.2008, P.S. Vigilance, Chandigarh.

Exhibit 'W6' is notice dated 18.02.2009 issued by Executive Engineer, Road Division No.1, M.C. Chandigarh, concerning one month notice pay to the workman.

Exhibit 'W7' is notice dated 01.05.2009 of retrenchment and sending compensation under Section 25-F of the I.D. Act issued by Executive Engineer, Road Division No.1, M.C. Chandigarh

Exhibit 'W8' is certified copy of judgment dated 05.08.2014 passed by the court of Shri Pradeep Syngal, JMJC, Chandigarh, in F.I.R. No. 10 dated 16.10.2008, P.S. Vigilance, Chandigarh.

Exhibit 'W9' is copy of application dated 20.01.2015 moved by the workman for joining to the Municipal Commissioner, Chandigarh on 20.01.2015 bearing notings of various officers of M.C. Chandigarh (consisting of pages 1 to 9).

Exhibit 'W10' letter dated 24.08.2015 issued by Sub-Divisional Engineer, Road Sub-Division No.1, M.C. Chandigarh to Executive Engineer, Road Division No.1, M.C. Chandigarh concerning recommendation for reinstatement of the workman.

Mark 'A' is copy of joining letter dated 26.11.2008.

Mark 'B' is copy of reply dated 05.03.2009 submitted to the Executive Engineer, Road Division No.1, M.C. Chandigarh.

On 28.02.2023 workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Vishal Sharma - SDE, R-2, MC. Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' & Exhibit 'M2' and Mark 'X'.

Exhibit 'M1' is reply dated 05.03.2009 submitted by the workman to retrenchment notice.

Exhibit 'M2' is order of termination bearing Memo No. 6642 dated 01.05.2009.

Mark 'X' is notice of retrenchment bearing Memo No.2900 dated 18.02.2009 under Section 25-F of the ID Act (exhibited as Exhibit 'W6' in evidence of workman).

9. During cross-examination of MW1 the workman put Memo No.1220 dated 24.06.2008 issued by the Sub-divisional Engineer, Roads Sub-division No.1 (MC), Chandigarh to the Enquiry Officer, Vigilance Cell, Sector 9, Chandigarh regarding verification of I/Card of Sh. Phool Chand S/o Sh. Bhagirath, Beldar, copy of the same is Exhibit 'W11'.

10. Learned Representative for the management closed the oral evidence on 19.07.2023 and the documentary evidence on 01.09.2023.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :-

Issue No. 1 :

12. Onus to prove this issue is on the workman.

13. Under this issue the workman Phool Chand examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto and supported his oral version with the documents Exhibit 'W1' to Exhibit 'W11' and Mark 'A' & Mark 'B'.

14. On the other hand, the management examined MW1 Vishal Sharma, SDE, R-2, Municipal Corporation, Chandigarh, who vide his affidavit Exhibit 'MW/1A' deposed the material contents of the written statement which are not produced here for the sake of brevity. MW1 supported his oral version with documents Exhibit 'M1' & Exhibit 'M2' and Mark 'X'.

15. From the oral as well as documentary evidence led by the parties, it comes out that it is undeniable fact that on account of arrest of Phool Chand (herein workman) in FIR No.10 dated 16.10.2008 under Section 419, 420, 467, 468, 471, 120-B IPC PS Vigilance, Chandigarh, the workman was terminated from service vide order dated 01.05.2009. As per allegations forming basis of FIR No.10/2008, the workman had sold a house allotted to him under rehabilitation scheme in Maloya colony and again got allotted another house in Palsora colony under rehabilitation scheme by changing his name to Gian Chand. It is further undeniable fact of the management that the workman faced criminal trial in FIR No.10/2008 and was acquitted by the Court of Mr. Pardeep Singh, JMFC, Chandigarh vide judgment dated 05.08.2014. Despite the judgment of acquittal, the workman was not taken back on duty by the management. It is not the case of the management that the workman was served with any charge sheet or that any disciplinary proceedings were initiated against the workman before passing the termination order. In this regard MW1 in his cross-examination admitted as correct that the workman was not served with any charge sheet by the department. MW1 admitted as correct that no domestic inquiry was held against the workman. As discussed above, the workman has been acquitted in the criminal trial of FIR No.10/2008. On independent analysis of the allegations against the workman in the present case it would come out that the management has not led an iota of evidence to connect the workman with the allegation of allotment of another house in Palsora Colony under the rehabilitation scheme by changing his name to Gian Chand. In this regard MW1 in his cross-examination admitted as correct that identity card of the workman was issued by Sub-divisional Engineer, Road Sub-Division No.1 / M.C. Chandigarh to the Inquiry Officer, Vigilance Cell, Sector 9, Chandigarh vide Exhibit 'W11'. For better appreciation the contents of Exhibit 'W11' are reproduced as below :-

"With reference above said subject, it is intimated that Sh. Phool Chand S/O Bhagirath working in this office as daily wage beldar. The I/Card No.106 dated 29.1.2001 issued by this office is original and true.

2. *Sh. Gian Chand S/O Sh. Bhagirath beldar not working under this Sub Division.*

It is for your kind information and further necessary action."

16. The management has failed to prove as to how Exhibit 'W11' is incriminating to the workman. As per Exhibit 'W1' the identity card is issued by the Municipal Corporation, Chandigarh on the name of Phool Chand S/o Bhagirath, Designation Beldar, which was valid up to 10.07.2007. The management has failed to bring on record any evidence to show that the workman has fabricated his identity card by mentioning his name therein as Gian Chand S/o Bhagirath and used the same for the purpose of allotment of another house in Palsora Colony. Moreover, the management has failed to prove the alleged allotment of house to the workman in Maloya under Rehabilitation Scheme or sale by workman of the alleged allotted house situated in Maloya. Even the name of the vendee, who purchased the alleged house situated in Maloya from the workman, is not disclosed in this case. There is no copy of any document such as transfer deed or sale deed showing the change of ownership of the alleged house situated in Maloya from the name of workman being transferor or vendor to the name of transferee or vendee. MW1 in his cross-examination stated that he does not know house number which was allotted to the workman as detailed in his affidavit Exhibit 'MW1/A'. MW1 further admitted as correct that even in the record of the department there is no allotment letter or possession letter showing any house was allotted to workman Phool Chand.

17. In the Gazette notification dated 20.05.1996 / Exhibit 'W4' issued by Government of India, Chandigarh Administration i.e. the seniority list of daily wage Beldars / Women Coolie junior in seniority, to be transferred to Chandigarh Municipal Corporation, the name of the workman Phool Chand S/o Bhagirath is mentioned at serial No.160 and the date of his joining is incorporated as 01.02.1984. As per notification No.3 dated 20.05.1996 / Exhibit 'W3' issued by Chief Engineer and Secy. Engg., Chandigarh Administration, Chandigarh,

in exercise of the power conferred by Clause (h) of sub-section (2) of Section 428-A of the Punjab Municipal Corporation Act, 1976, as extended to the Union Territory Chandigarh, by the Punjab Municipal Law (Extension to Chandigarh) Act, 1994 in (Act No.45 of 1994) read with Chandigarh Administration, Local Government Department, notification bearing Nos.2/6/FI(2)-LG-95/12740 dated the 28th September, 1995 and No.2/6/FI(2)-LG-96/6220 dated 16th May, 1996, the Administrator, Union Territory Chandigarh ordered to transfer of officers/officials working in the Engineering Department of this Administration as per Annexure 'A/6' to Annexure 'A/11' to the Municipal Corporation, Chandigarh with immediate effect. It was further ordered that these officers / officials on their transfer shall become employees of the corporation with immediate effect and they shall report to the Commissioner, Municipal Corporation of Chandigarh for their further posting. As per letter Memo No.6117-6190 dated 21.05.1996 / Exhibit 'W2' issued from Executive Engineer, Capital Project Division No.2(R), Chandigarh to Phool Chand S/o Bhagirath, Beldar, as per notification No.3 dated 20.05.1996 issued by the Chief Engineer and Secretary Engineering, Chandigarh Administration, Chandigarh and received in their office vide his Endst. No.MCC/T/2643-63 dated 20.05.1996, workman Phool Chand was directed to report for duty in the Municipal Corporation, Chandigarh immediately. MW1 when put to cross-examination admitted as correct that the workman was transferred to MC and was directed to report there immediately vide Exhibit 'W2' and letter Exhibit 'W3' is issued from Chief Engineer and Secretary Engineering for transferring all workers to MC and Exhibit 'W4' is Chandigarh Administration Gazette notification vide which the workman along with other workers was transferred to MC and the name of the workman is at serial No.160 showing his seniority in column 2, name in column 3, date of joining in column 6 and Division number in column 7. From Exhibit 'W7' i.e. Memo No.6642 dated 01.05.2009 issued from Executive Engineer, Roads Division No.1, MC, Chandigarh to workman Phool Chand, his services were dispensed with immediate effect. From Gazette notification Exhibit 'W4', the date of joining of the workman is proved as 01.02.1984 and from Exhibit 'W7' the date of termination of services of the workman is proved as 01.05.2009. The management has failed to controvert the fact that the workman remained in continuous service from 01.02.1984 to 01.05.2009. There is no dispute with regard to the fact that initially the workman has joined with the Engineering Department on 01.02.1984 and on the basis of notification Exhibit 'W4', the workman was transferred from Engineering Department to Municipal Corporation, Chandigarh w.e.f. 21.05.1996. The workman has completed 240 days of continuous service in 12 calendar months preceding the termination of his services (services terminated on 01.05.2009). Thus, the workman falls within the definition of Section 25-B of the ID Act. Once the workman falls within definition of Section 25-B of the ID Act, the provisions of Section 25-F of the ID Act is attracted. In the present case, as proved from Exhibit 'W6' the management i.e. Executive Engineer, Roads Division No.1, MC, Chandigarh vide letter bearing Memo No.2900 dated 18.02.2009 issued notice of retrenchment as per Section 25-F of the ID Act to the workman wherein it is mentioned that as informed by the Home Secretary-cum-Chief Vigilance Officer, Chandigarh Administration, FIR No.10 dated 16.10.2008 under Sections 419, 420, 467, 468, 471 and Section 120-B of IPC is lodged against the workman, who was arrested on 01.11.2008 and sent to judicial custody for 14 days up to 15.11.2008. It is further mentioned in the said notice that his alleged involvement in a criminal case has rendered him liable for unbecoming a Government employee. As such he was given one month's notice to show cause notice as to why his services may not be terminated from their office. The perusal of Exhibit 'W7' i.e. letter bearing No.6642 dated 01.05.2009 issued from Executive Engineer Roads, Division No.1, MC, Chandigarh to workman Phool Chand, would show that the reply submitted by the workman was considered and found unsatisfactory and there upon the services of the workman were ordered to be dispensed with immediate effect. The relevant portion of letter Exhibit 'W7' is reproduced as below :-

"The reply submitted by you has been considered by the undersigned and found unsatisfactory. It has been established that the FIR was registered against you for your alleged involvement in such acts of moral turpitude.

In view of the above, I am of the opinion that your continuance in the service is no longer required. I hereby order that your services are dispensed with immediate effect.

You will be paid compensation as per Section 25-F of the ID Act, 1947."

The above mentioned contents of Exhibit 'W7' would show that the Executive Engineer Roads, Division No.1, MC Chandigarh after taking reply to notice dated 18.02.2009 / Exhibit 'W6' straightway ordered to dispense with the services of the workman. In the order Exhibit 'W7' the reasons are not mentioned on the basis of which the reply submitted by the workman is found unsatisfactory. Even, in case of the alleged act of moral turpitude, the management is bound to comply with the conditions incorporated in Section 25-F of the ID Act. In the present case, the management did not comply with any of the conditions, which are precedent to retrenchment of workman. For better appreciation Section 25-F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

18. Neither it is the case of the management nor it is proved on record that before terminating the services of the workman, one month's prior notice was issued to the workman. It is neither pleaded nor proved by the management that the workman was paid notice pay in lieu of the notice period. In Exhibit 'W7', though it was mentioned that the workman will be paid compensation as per Section 25-F of the ID Act but in fact no retrenchment compensation was paid by the management to the workman. In this regard, MW1 in his cross-examination stated that the department has not given any retrenchment compensation to the workman till date as per record. As already discussed above, MW1 in his cross-examination admitted as correct that the workman was not served with any charge sheet by the department and no domestic inquiry was held against the workman. The aforesaid version of MW1 would prove that no departmental proceedings on the basis of FIR No.10/2008 were initiated against the workman. As per Exhibit 'W10' i.e. letter addressed from Sub-divisional Engineer Roads, Sub-division No.1, MC, Chandigarh to Executive Engineer Roads, Division No.1, MC, Chandigarh bearing Memo No.1427 dated 24.08.2015 relating to the subject of request of Shri Phool Chand S/o Shri Bhagirath for reinstatement in service, it was recommended that Phool Chand may be reinstated in the service. MW1 in his cross-examination admitted as correct that after final decision dated 05.08.2014 / Exhibit 'W8', after acquittal of the workman, he submitted application for joining / reinstatement on 20.01.2015. MW1 further admitted as correct that Exhibit 'W10' dated 24.08.2015 was also issued by Sub-Divisional Engineer Road, Division No.1, MC, Chandigarh to the workman. The version of MW1 to the extent that letter Exhibit 'W10' was issued to the workman is incorrect as perusal of Exhibit 'W10' would reveal that it was issued to The Executive Engineer Roads, Division No.I, MC, Chandigarh. The management did not bring on record any document to show what further action was taken by the Executive Engineer Roads, Division No.1, MC, Chandigarh on receipt of letter Exhibit 'W10'.

19. The ***judgment dated 25.03.2013 of Hon'ble High Court of Punjab & Haryana passed in Const. Sukhchain Singh Versus The State of Punjab & Another, in CWP No.5228 of 2011***, referred by

Learned Representative for the workman is applicable to the facts of the present case where in similar circumstances, the petitioner, who had been dismissed from service on account of criminal charges and subsequently acquitted, was held to be entitled for full pay and allowances by virtue of Rule 7.3 of the Punjab Civil Services, Volume - I, Part - I.

20. In view of the reasons recorded above, the termination order dated 01.05.2009 / Exhibit 'W7' is proved to have been passed in violation to Section 25-F of the ID Act and therefore, the same is illegal and hereby set aside.

21. In the notification Exhibit 'W4' the date of birth of the workman is recorded as 01.08.1965. By now the workman has already attained the age of 58 years. In the claim application as well as during evidence the workman has not mentioned the amount of his last drawn salary. It is also not mentioned whether the workman was getting daily wages according to the DC rates, U.T. Chandigarh or in accordance with the ALC rates or under the Minimum Wages Act. Under the circumstances, the workman is held entitled to retrenchment compensation under Section 25-F of the ID Act to be calculated keeping in view his last drawn wages.

Relief :

22. In the light of findings on the issue above, this industrial dispute is allowed to the effect that the workman is entitled to retrenchment compensation under Section 25-F of the ID Act to be calculated keeping in view his last drawn wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 01.09.2023

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Bharti, W/o Tarun Mehra, R/o # 285, Sector 15-A, Chandigarh - 160015, have changed my name from Bharti to Bharti Mehra.

[1544-1]

I, Sapna, W/o Gautam Mehra, R/o # 285, Sector 15-A, Chandigarh - 160015, have changed my name from Sapna to Sapna Mehra.

[1545-1]

I, Poonam, D/o Jeet Bahadur, R/o # 1161, FF, Sector 7-B, Chandigarh, have changed my name to Poonam Rasaili.

[1546-1]

I, Sunil, S/o Baldev Raj, R/o 1327, Sector 37-B, Chandigarh, have changed my name to Shashi Kumar.

[1547-1]

I, Surjeet Singh, S/o Late Sh. Chanan Singh, R/o House No. 1059/2, B.M.K., Manimajra, Chandigarh, have changed my name from Surjeet Singh to Surjeet Singh Heer.

[1548-1]

I, Ranjit Singh, S/o Gurdev Singh, R/o H. No. # 5635, Sector-56, Chandigarh, I have change my name Ranjit Singh to Ranjit Singh Banga.

[1549-1]

I, Om Parkash, S/o Lallan Bangali, # 634, Dadumajra, Chandigarh, have changed my name from Om Parkash to Om Kumar.

[1550-1]

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